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RECOMMENDED BY:

RANDALL L. WOODFIN, MAYOR

SUBMITTED BY:

RANDALL L. WOODFIN, MAYOR

ORDINANCE NO. _____

AN ORDINANCE TO AMEND ORDINANCE NO. 20-48, AS AMENDED BY ORDINANCE NO. 20-50, TO MODIFY THE “SHELTER IN PLACE ORDER”, A PUBLIC SAFETY CURFEW FOR THE CITY OF BIRMINGHAM DURING THE COVID-19 PUBLIC HEALTH EMERGENCY, MODIFYING THE DAILY PUBLIC SAFETY CURFEW DURING THE HOURS OF 10:00 P.M. AND 5:00 A.M., EXTENDING THE DURATION OF THE ORDER AND ALIGNING CERTAIN PROVISIONS WITH THE APRIL 28, 2020 “SAFER AT HOME ORDER” OF THE STATE HEALTH OFFICER.

WHEREAS, on March 24, 2020, the Council of the City of Birmingham adopted a curfew ordinance establishing a “shelter in place order” for the City, Ordinance No. 20-48, upon consideration of the emergency declarations and proclamations of the President of the United States, the Governor of the State of Alabama, and the Mayor of the City of Birmingham, and the public health orders of the Jefferson County Health Officer and the State Health Officer pursuant to the COVID-19 public health emergency; and,

WHEREAS, on April 3, 2020, the Council of the City of Birmingham amended and extended its public safety curfew “shelter in place order” for the City by adoption of Ordinance No. 20-50, upon consideration of the continuing COVID-19 emergency conditions and the President’s extension of his social distancing guidelines to April 30, 2020; and,

WHEREAS, on April 3, 2020, the State Health Officer issued an “Emergency Stay at Home Order” through 5:00 p.m. on April 30, 2020, including continuation of the suspension of certain in-person gatherings and closing nonessential businesses; and,

WHEREAS, on April 28, 2020, the State Health Officer issued an amended emergency order, relaxing some of the restrictions of the April 3rd order to allow certain businesses and gatherings to resume, with conditions, and designating the order as a “Safer at Home Order”; and,

WHEREAS, the State Health Officer’s “Safer at Home Order” preempts and supersedes any less restrictive municipal orders or ordinances; and,

WHEREAS, the City’s “Shelter in Place Order” is an “around-the-clock” curfew on nonessential activities, effective through 11:59 p.m., April 30, 2020, but may be extended if the COVID-19 emergency conditions continue and may be modified with respect to changing circumstances; and,

WHEREAS, the City Council, in consultation with the Mayor, and on consideration of the State Health Officer’s order and information provided to the public by the Governor, recognizes that the COVID-19 emergency conditions continue in the State of Alabama and specifically in the City of Birmingham, but that changing circumstances support actions to cautiously reduce restrictions on travel and activities to begin to “reopen” the City to business and social activities; and,

WHEREAS, the Council has authority under Ala. Code, Sec. 11-47-131, by ordinance, to prevent the introduction of contagious, infectious, or pestilential diseases into the City and to establish and regulate a sufficient quarantine, not inconsistent with laws of the state, in the City and to punish any breach of quarantine law; and,

WHEREAS, the Council of the City of Birmingham, has authority pursuant to the Alabama Emergency Management Act of 1955, as amended, codified at Ala. Code, 1975, Sec. 31-9-10(b)(5), to exercise certain powers if the Council finds that any of the conditions listed in Sec. 31-9-2(a) have occurred or are likely to occur, specifically, the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action, or from fire, flood, earthquake, or other natural causes; and,

WHEREAS, Sec. 31-9-10(b)(5)b. authorizes the Council to impose a public safety curfew for its inhabitants, to be enforced by the Birmingham Police Department or other appropriate law enforcement agency within the City; and,

WHEREAS, the Council finds that the unprecedented public health emergency resulting from the natural cause of community spread of a novel human coronavirus disease, COVID-19, has occurred in the City of Birmingham and continues to present a clear and present threat to the public health, safety, and welfare of the citizens and visitors in the City, but that certain restrictions imposed by Ordinance No. 20-50 may be relaxed, based on changed circumstances and the guidance of the State Health Officer; and,

WHEREAS, due to continued uncertainty of the duration and severity of the threat of the spread of COVID-19 and its effect on the citizens of the City of Birmingham, the Council finds that amendment of Ordinance No. 20-50, the City’s “Shelter in Place Order” is appropriate at this time and that further evaluation for additional modifications may be necessary prior to its expiration; and,

WHEREAS, the State Health Officer’s order shall remain in effect until 5:00 P.M. on May 15, 2020, and shall be evaluated before that time to determine whether to extend the Order or if it may be relaxed further; and,

WHEREAS, the Council, in consultation with the Mayor, finds that, with the reopening of retailers, it is reasonable to reduce the daytime restrictions on the City’s citizens and visitors but advisable to maintain an overnight curfew. Bars, nightclubs and other social and entertainment venues remain closed by order of the State Health Officer; and,

WHEREAS, the Council finds that it is in the best interest of the public peace, health, safety, and welfare and to preserve the lives of citizens of the City of Birmingham and visitors to the City, to amend the Ordinance No. 20-50 to modify the “Shelter in Place Order” public safety curfew to continue measures that have been ordered to date to control community spread of COVID-19 in the City of Birmingham while relaxing some restrictions to align with the State Health Officer’s April 28, 2020 “Safer at Home Order”.

SECTION 1.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Birmingham that its “Shelter in Place Order,” imposed by Ordinance No. 20-50, shall continue in effect until 11:59 p.m. on May 15, 2020. Prior to that time, this ordinance shall be evaluated to determine if, in accordance with federal, state and local authorities, including the appropriate health authority(ies), the COVID-19 emergency conditions require continuation or modification of this ordinance, including further relaxing of its restrictions, or if it shall expire without further amendment. If there is insufficient information to make such a determination at the May 12, 2020 regular meeting of the City Council, the ordinance shall continue in full force and effect until the Council meets to review this ordinance with respect to any changed conditions. If indicated by changed conditions, the Mayor is authorized to declare temporary modifications to the provisions of this ordinance that shall be in effect from 11:59 p.m. until amendments to this ordinance are adopted, approved and published. This ordinance may be referred to as the “Safer in Birmingham Curfew”. Ordinance No. 20-50 is hereby amended as follows:

(a) This public safety curfew shall apply to all persons within the City of Birmingham. The curfew shall be in effect daily from 10:00 p.m. to 5:00 a.m. During such hours, all persons shall not be or remain in public places and, if residents of the City of Birmingham, shall remain in their places of residence, except as further provided in subsection (e) of this ordinance.

This curfew shall not apply to:

- (1) public safety or emergency service activities, including but not limited to law enforcement, fire and rescue services, and emergency management agencies
- (2) first responders, crisis intervention workers, public health workers, emergency management personnel, emergency dispatchers, law enforcement personnel, and related contractors
- (3) persons employed by or contracted to utilities, cable, and telecommunications companies and engaged in activities necessary to maintain or restore utility, cable, and telecommunications services
- (4) persons providing fire, police, sanitation, security, emergency and hospital services, food delivery services and other deliveries of merchandise or mail
- (5) persons seeking essential services or commodities; persons who are vulnerable to the most serious effects of the COVID-19 disease must remain at home, unless seeking medical treatment
- (6) persons supplying or restocking businesses in order to provide essential services or products, i.e. home improvement, groceries, fuel delivery locations, pharmacies or other

retailers offering emergency supplies, transportation of fuels, movement of equipment and personnel for the provision of humanitarian support, and movement of equipment necessary for the protection of critical infrastructure or public safety

(7) persons employed by the federal, state, county or city government or their agencies working within the course and scope of their public service employment. Such employees shall follow any current or future directives regarding performance of their duties, including working from home, issued by their respective employers.

(8) persons experiencing homelessness within the City

(b) All businesses within the City of Birmingham shall comply with the Order of the State Health Officer, as amended April 28, 2020, as it is or may be amended. The restrictions detailed in the Order of the State Health Officer are hereby adopted by reference in this ordinance.

(c) All public and private non-work gatherings of 10 or more persons or of any size where a consistent distance of at least six feet cannot be maintained are prohibited, except as to those exempted activities further provided in this ordinance. This provision does not apply to gatherings within a single household or living unit. "Drive-in" gatherings of any size are permitted if they comply with the conditions set out by the State Health Officer's Order of April 28, 2020.

(d) Subject to the exceptions further provided in subsection (g) of this ordinance, all nonessential travel is prohibited. Social distancing and recommended hygienic practices shall be observed when traveling by local public transit or public service vehicles. Transportation in Interstate Commerce is not governed by this ordinance.

(e) Workplaces, businesses and activities closed by order of the State Health Officer shall remain closed to the public.

(f) Retailers allowed to reopen pursuant to the State Health Officer's Order as of 5:00 p.m. on April 30, 2020 shall do so in compliance with the rules set out therein. (Emergency maximum occupancy rate of 50% of the normal occupancy load, with the rate posted in a conspicuous place and employees posted at entrances and exits to enforce the requirement; requiring customers or patrons to maintain social distancing of six feet between individuals; and reasonably comply with CDC and Alabama Department of Public Health COVID-19 sanitary guidelines.)

(g) Exceptions. People may lawfully leave their residence during curfew hours while this ordinance is in effect only to engage in the following activities:

(i) Essential Activities. To engage in certain essential activities, including, without limitation, visiting a health or veterinary care professional, obtaining medical supplies or medication, obtaining grocery items (including, without limitation, canned food, dry goods, fresh fruits and vegetables, pet supplies, fresh or frozen meats, fish, and poultry, any other household consumer products and products necessary to maintain the safety and sanitation of residences and other buildings) for their household or to deliver to others, or for legally mandated government purposes. Additionally, to engage in any travel related to (a) providing care for minors, the elderly, dependents, persons with disabilities, or other

vulnerable persons; (b) returning to one's place of residence from outside the City; (c) travelling to one's place of residence located outside the City; (d) travelling through the City from one location outside the City to another location outside the City; (e) compliance with an order of law enforcement or court shall be exempt from this ordinance; (f) travelling to or from a place of business which provides essential services by owners and employees of such business; or (g) legally mandated government purposes. Persons engaging in these essential activities shall maintain reasonable social distancing practices. This includes maintaining a distance of at least six-feet away from other persons, frequently washing hands with soap and water for at least twenty seconds or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands. These Essential Activities are subject to change and are not limited to the activities listed in this subsection. Individuals must use reasonable judgement as it relates to the many, and various circumstances during this time. At the very least, businesses that have not been declared nonessential by the State Health Officer, as applicable, that remain open must implement consistent social distancing practices of six feet between persons to avoid the spread of COVID-19.

(ii) Outdoor Activities. To engage in outdoor activity and recreation, provided that the recreational activity does not involve physical contact with other persons and individuals comply with social distancing requirements, including, without limitation, walking, hiking, running, cycling; use of scooters, roller skates, skateboards, or other personal mobility devices; or travel in a vehicle with household members to a location where it is possible to walk, hike, run or ride a bike, or operate personal mobility devices, while maintaining social distancing practices. Indoor and outdoor playgrounds for children, except those located within childcare centers, shall be closed for all purposes.

(iii) Work in Support of Essential Activities. To perform work providing essential products and services or to otherwise carry out activities specifically permitted in this ordinance.

(iv) To care for or support a friend, family member, or pet in another household.

(v) Provision of essential goods and services. This includes those businesses and activities deemed essential by Order of the State Health Officer.

(vi) Providing any services, goods, or work necessary to build, operate, maintain or manufacture essential infrastructure, including without limitation construction of commercial, office and institutional buildings, residential buildings and housing; airport operations, food supply, concessions, and construction; port operations and construction; water, sewer, gas, electrical, oil extraction and refining; roads and highways, public transportation and rail; solid waste collection and removal; flood control and watershed protection; internet and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services); and manufacturing and distribution companies deemed essential to the supply chains of the industries referenced in this Paragraph,

provided that they carry out those services and that work in compliance with social distancing practices as prescribed by the Centers for Disease Control and Prevention and the State Health Officer, to the extent possible.

(h) The City shall work with governmental and nongovernmental partners to provide emergency shelter, to the extent possible, to unhoused persons in the City. Providers shall make all efforts to provide protection from the spread of COVID-19.

(i) Future, more stringent measures, if any, imposed by order of the Jefferson County Health Officer, made with the approval of the State Health Officer, or by the State Health Officer related to matters referenced in this ordinance shall apply.

(j) The provisions of this ordinance shall not be independently used by a law enforcement officer as reasonable cause for a traffic stop.

SECTION 2. To the extent that this ordinance is in conflict with other ordinances of the City, this ordinance shall supersede the others until this ordinance is amended or repealed.

SECTION 3. Failure to comply with this ordinance is punishable by a fine of up to \$500.00 and/or up to thirty (30) days in the municipal jail.

SECTION 4. If any subsection, sentence, clause, phrase, or word of this ordinance or any application of it to any person, structure, or circumstance is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, then such decision shall not affect the validity of the remaining portions or applications of this ordinance.

SECTION 5. This Ordinance shall become effective upon passage, approval and publication or as otherwise provided by law.